IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11191 of 2003

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAYANKUMAR RAJNIKABEN TRIVEDI

Versus

DISTRICT EDUCATION OFFICER ANAND

Appearance:

MR EE SAIYED for Petitioner No. 1

MR DESAI for respondent no.1

MR AD OZA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 27/08/2003

ORAL JUDGEMENT

1. Leave to delete respondent no.2. Accordingly the name of respondent no.2 stands deleted.

2. Rule. Mr. Desai waives service of notice of rule on behalf of respondent no.1 and Mr. A.D. Oza,

learned GP waives service of notice of rule on behalf of respondent no.2. With the consent of the respective parties, the matter is taken up for final hearing today.

3. The only question involved in this petition is whether the petitioner should be allowed to assert his right as per the Adoption Deed dated 7th April 2000 or not.

4. The short facts of the case is that the mother of the petitioner got married with one Shri Rafiuddin Kazi and after the birth of the petitioner the custody of the petitioner was delivered to one Ms. Rajnikaben Trivedi. The petitioner was formerly known as Kazi Moinoddin Rafiyuddin and it is the case of the petitioner that since the petitioner has embraced Hindu religion on account of his care being taken by Rajnikaben, the petitioner has adopted the name of Nayankumar and wants himself to be identified as Trivedi Nayankumar Rajnikaben. The petitioner was adopted by registered Adoption Deed dated 7th April 2000 and it is the case of the petitioner that accordingly the petitioner has become the lawful son of Rajnikaben. The true copy of the registered Adoption Deed is placed on record.

5. Since the petitioner was formerly known as Kazi Moinoddin Rafiyuddin, he applied to the District Education Officer for change of his name as " Trivedi Nayankumar Rajnikaben by producing the copy of the government gazette whereby the change in the name was accordingly notified in the government gazette dated 10.4.2003. However, no actions for correction of the name in SSC certificate and other school record were taken by the District Education Officer by giving appropriate directions to the school authorities and therefore this petition.

6. In case of Amruta Vijay Vora Vs. Union of India, in Special Civil Application No.11959 of 2002, this Court had an occasion to consider the right of a person who is adopted by registered adoption deed, and it was observed at para 6 of the said judgement as under:

> "Even otherwise also, as per section 16 of Hindu Adotpion & Maintenance Act, 1956 (hereinafter referred to as "the Act") when any adoption deed is registered there shall be a presumption for documents relating to the adoption and the presumption shall be that the adoption has been made in compliance with the provisions of Act unless and until it is disproved. Such

> presumption can be made applicable not only in court proceedings but such presumption in view of section 16 can also reasonably be made applicable even at the time when the authority has to consider the matter for issuance of passport because the passport authority while considering the matter for issuance of passport is also acting as a quasi judicial authority."

Ultimately the Regional Passport Officer was directed to consider the application and issue the passport to the petitioner therein as lawful daughter of Vijay Hiralal Vora. The only distinguishing feature in the present case is that the petitioner was formerly known by Muslim name and now known by Hindu name. As such it has not been brought to the notice of the Court regarding any prohibition under the law in embracing Hindu or Hindu religion by a person who may be either born as Muslim or a Muslim.

7. In any event, the petitioner is lawfully adopted by a Hindu lady and the Deed of Adoption is registered and therefore the presumption as per the provisions of section 16 of Hindu Adoption and Maintenance Act, 1956 can be drawn in favour of the petitioner also. The said presumption would operate so long as there is no challenge or such presumption is not rebutted by the procedure known to law. It is not the case of any of the respondent that there are facts and circumstances which would not attract such presumption. The said aspect is coupled with the fact that for change of the name of the petitioner by changing his identify, it is also published in the Government Gazette dated 10.4.2003 and therefore a judicial notice can be taken that such adoption is accordingly notified in the government gazette and known to the public at large.

8. When the petitioner himself has become lawful son of Rajnikaben and has adopted the name of Nayankumar, he would be justified in identifying himself as Trivedi Nayankumar Rajnikaben and at the same time the petitioner also would be justified in getting appropriate correction in the school record or other relevant documents in the school record for change of his name from Kazi Moinoddin Rafiyuddin to Trivedi Nayankumar Rajnikaben.

9. In view of the aforesaid discussion the respondent no.1 is directed to give necessary instructions to school authority and other concerned authority for changing the name of the petitioner from Kazi Moinoddin Rafiyuddin to Trivedi Nayankumar

Rajnikaben and such change would also be effected in the examination record as a consequence of such direction.

10. The petition shall stand allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

[JAYANT PATEL, J.]
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